DOCUMENT RESUME

ED 202 178 EA 013 637

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TITLE Choice in Elementary and Secondary Education. Working Paper in Education Finance No. 34.
INSTITUTION Education Commission of the States, Denver, Colo. Education Finance Center.
PUB DATE Feb 81
NOTE 43p.

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Advisory Committees; Educational Administration; Educational Finance; Educational Vouchers; Elementary Secondary Education; Magnet Schools; *Nontraditional Education; *Parent School Relationship; School Community Relationship; School Desegregation; State Church Separation; Tax Credits

ABSTRACT

Efforts to expand parents' choice of schools, curricula, and teachers in elementary and secondary education have led to new educational and financial programs, but have also raised important legal issues. Programs to expand educational choice and administrative flexibility in public schools included alternative, mini, and magnet schools, parent advisory councils, school-based management, and decentralization. Their goals have been to achieve a more comprehensive education, better student performance, school desegregation, or improved school-community relations. Success of the educational changes has been greatest where they are integrated into the district's standard programs. The new financial arrangements, including vouchers and tuition tax credits, have extended choice to nonpublic as well as public schools, with the goals of expanding parent control of schools, school accountability, and public financing of nonpublic schools. Critics of these financial arrangements have charged that they perpetuate fiscal, racial, and social inequities and do not benefit those students with the greatest needs. Both the educational and financial programs to expand choice have raised legal issues revolving around their ineffectiveness in remedying racial segregation; violation of the separation of church and state; discrimination against handicapped, bilingual, or female students; and violation of due process regarding access to school programs. (Author/RW)

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WORKING PAPERS IN EDUCATION FINANCE

Working Paper No. 34

CHOICE IN ELEMENTARY AND SECONDARY EDUCATION

by

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February 1981

EA 013 637

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ACKNOWLEDGMENTS

Appreciation is expressed to Joanne Hammond and Anna Likens who prepared the manuscript and to Allan Odden and John Augenblick for their helpful comments.

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EXECUTIVE SUMMARY

This paper reviews numerous developments related to the objective of providing more choice in elementary and secondary education in the United States. The paper reviews alternatives through which choice is provided in the public school sector, summarizes issues and problems surrounding the voucher and tuition tax credit proposals which have been suggested to expand choice and surveys the legal issues that may emerge with any policy designed to expand choice.

In the 1970s a number of approaches were pursued to provide greater choice within the public school sector. Alternative schools, still in existence in Minneapolis, Minnesota and Jefferson County, Colorado; mini schools in Alum Rock, California; and magnet schools, currently operating in Houston, Cincinnati and Detroit are examples of the types of change that were attempted. The goals which these approaches were designed to satisfy did vary. A more comprehensive education focus and improved student performance were among the main objectives in every case. However, many districts had the dual objective of providing an acceptable mechanism through which to desegregate their schools. In general, the viability of a particular approach seems to have depended on the extent to which effective strategies were used to integrate it rather than separate it from the standard program of the school district.

In addition to programs designed to broaden curriculum focus and education philosophy, there were also attempts to enhance directly the deteriorating link between the schools and the public. Decentralization of school administration was implemented in a number of large urban school districts with Detroit and New York City serving as notable examples. Parent advisory councils became part of most federal programs and some state programs, most significantly the California School Improvement Program. School based management, a concept under which school site officials have decision authority over the use of funds, has been adopted in Florida. While evaluations of these efforts have not produced conclusive evidence as to their impact on a wide variety of education objectives, they have shown that improvements in school-community relationships have occurred.

Voucher and tuition tax credit proposals are other mechanisms to expand choice but include both the public and nonpublic school sectors. The rationales for these proposals include the need for more public financing of nonpublic schools, for placing greater control of schools in the hands of parents and for making schools more accountable to their clients. Critics of these proposals suggest that they are simply a means for the affluent to abandon the public schools; that they would perpetuate fiscal inequities, racial isolation and social class separation; and that they would probably not provide new options for the handicapped, low achieving or otherwise disadvantaged student.

From a legal perspective, choice proposals confront a range of barriers. The courts have found many voucher, open enrollment or magnet school plans to be in conflict with or ineffective as desegregation strategies, although there are some exceptions. Similarly, voucher and tuition tax credit plans as usually conceived run afoul of the First Amendment requirement that church and state be separated. In order for programs to pass the constitutional church-state barriers, they tend to become more narrow in scope, affecting a smaller number of schools or school programs. The courts, to date, would overturn general voucher or tuition tax credit plans covering the entire program in both nonpublic/parochial and public schools. In addition to the major legal issues of racial segregation and church-state relations, choice plans also have the potential to discriminate against handicapped, bilingual and female students, as well as violate due process requirements related to access to special academic programs, and thus could be found unconstitutional on these grounds.

The paper concludes by pointing out that expanding choice in elementary and secondary education can involve educational, and philosophical issues which policymakers must recognize in making decisions about alternative proposals.

INTRODUCTION

What is meant by choice in education? In the context presented here, choice refers to the ability of parents to select an education approach -- as embodied by a particular teacher, program or school system -- that is consistent with their needs and interests and those of their children. Examples might include an ability to select individual schools under an open enrollment policy or to select an alternative school as a substitute for the traditional school program. Choice could involve the use of minischools designed to provide unique and innovative curriculums. Various financing arrangements such as vouchers or tuition tax credit programs could be used to give families greater flexibility in choosing between public and private school systems.

Any discussion of choice in education will involve a series of complex and interrelated issues. Recognizing that resources available for education are limited, efforts to expand choice raise questions of <u>efficiency</u> with respect to the delivery of educational services. There are <u>equity</u> considerations associated with the manner in which various proposals to expand choice will impact upon low income families, minorities and various special student populations. There are a number of <u>legal</u> issues that complicate any effort to expand choice in elementary and secondary education. Examples include compulsory attendance laws, student tracking and court-ordered desegregation activities. Finally, there are <u>education</u> issues related to what is best for children. Who determines what is best for the student: the state, professional educators, parents or the students themselves?

What is the historical context from which recent discussions of choice have emerged? During the 1950s and 1960s, elementary and secondary education was characterized by massive growth. Major problems for the education establishment were building new schools, training teachers and developing new and innovative programs. Public confidence in the ability of the public schools to improve the quality of life for all Americans was at an all-time high and resources available for education were plentiful. It was recognized that students had different needs and funds were soon channeled to the schools to address the needs of a diverse student body.

This trend was reversed during the 1970s. Changing demographic conditions brought about enrollment decline and slow economic growth created pressures to reduce taxes and divert resources to alternative uses. At the same time public sentiment was beginning to change. The vast amount of resources made available for compensatory education programs failed to produce expected results in the early years of implementation. The business community complained of unqualified high school graduates and postsecondary institutions noticed increasing numbers of ill-prepared entering freshmen. Furthermore, some argued that the education bureaucracy

had become too large to be responsive to individual needs and desires.*

Growing dissatisfaction with the public school system -- as major segments of the community found themselves unrepresented, and as the quality of programs was perceived to have diminished -- led to a variety of responses, all directed toward trying to change the system of producing educational services. This trend began in the late 1960s; as it focused on ways of making the preferences of individual parents count. A number of innovations emerged from within the public sector: decentralized governance, school-based management, school advisory councils, alternative schools and schools within schools, to name a few. Each of these was conceived as an attempt to stimulate parental involvement in education decisions and to expand the education alternatives available to school children.

In the meantime, ideas had surfaced that proposed to change substantially the existing method of funding education, carrying with them the possibility of far reaching changes in the education system as a whole.

The idea of vouchers emerged as one means of placing greater control in the hands of parents by giving them the power to choose among schools and program offerings. Tuition tax credit proposals were introduced in hopes of expanding the range of alternatives available to parents who wanted "out" of the public school system.

This paper summarizes many of the developments of the last decade that have emerged in an attempt to offer parents greater choice in the kind of education their children receive. The discussion is organized in the following manner. Section I presents an overview of efforts to expand choice within the existing framework of the public schools both in terms of programmatic and governance concerns.

Section II reviews the two major funding proposals to expand choice beyond the public sector: vouchers and tuition tax credits.

Section III presents an overview of some of the legal issues that have been raised in relation to existing and proposed efforts to expand choice. Section IV presents concluding remarks.

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*On the impact of federal funds for compensatory education, see Paul Berman and Mibrey Wallin McLaughlin, "Federal Support for Improved Education Practice," in The Federal Interest in Financing Schools, ed. Michael Timpane (Cambridge, Mass.: Ballinger Publishing Co., 1978).

I. CHOICE IN THE PUBLIC SECTOR

During the past decade, the public schools of this country have faced a period of decline and retrenchment. The ability to achieve the fundamental objective of providing a free school system of high quality for all children has been undermined by many factors including a loss of public support. The disaffection for the public schools has been well documented (National Committee for Citizens in Education, 1975).

The public education establishment has reacted to these pressures in a number of ways. This section reviews a number of reforms and innovations which have surfaced in the public sector as a means of expanding choice in elementary and secondary education.

Alternative Schools

One approach to providing greater choice in the nature of educational offerings is encompassed in the development of alternative schools. Under this approach, parents, teachers and students all agree to start a separate public school which incorporates into the school setting educational and cultural orientations that differ from those of the traditional school setting. Such a school may serve predominantly middle class children, it may be found in the black community, or it may be a school with an ethnically diverse student body. An alternative school might focus on the basics, encompass the open classroom ideology or emphasize relationships to the community (i.e., that children should be educated from within the community in schools that are controlled by the community).

Although educational alternatives have been available outside the public schools for many years, the development of alternatives within the public sector really began in the early 1970s when a variety of new approaches to learning surfaced across the country. Experiments with alternative schools were widespread. The National School Boards Association (NSBA) reported in 1976 that an alternative school could be found in one out of every four school districts in the country (NSBA, 1976, p. 5). Minneapolis, Boston, Berkeley, New York, Philadelphia and Seattle are examples of large cities that tested the concept (Fantini, 1976; Cooper, 1971).

The experiment with alternative schools in Minneapolis served as the prototype for other experiments. Initiated in 1971, it was called the Southeast Alternatives project. Concentrating on a small section of the city, the school district offered parents and teachers a choice among five alternative school settings.

1. Tuttle Contemporary School offered the usual self-contained, graded education program.

2. Pratt and Motley Elementary Schools were paired and provided continuous-progress, nongraded programs for children ages 5-12.

3. The Marcy Open School allowed children ages 5-12 and their parents a slightly wider variety of learning environments which placed heavy emphasis on the interaction among students, teachers and parents. In fact, students and teachers were grouped in "families." Parent advisory committees were established to assist teachers in equipping and designing classrooms and in setting up the evaluation systems for the participating students.

4. The Southeast Free School offered the "wide-open" education approach where the emphasis was not on learning for the sake of learning, but on learning as a means of accomplishing whatever the student wants out of life.

5. Marshall University High School provided junior high and high school students with a number of alternatives ranging from a trimester plan of individual-directed study to a highly structured program with less individual control.

Since that time, the alternatives program has been adopted on a districtwide basis. Every child in grades K-6 has a choice among a contemporary, open, continuous-progress, fundamental or free school approach. There are three open school programs currently operating at the junior high school level and one open school at the senior high level. In addition, approximately 1,000 children are currently participating in a wide variety of alternative programs for high school dropouts.

Jefferson County, a large suburban school district west of Denver, Colorado also has had a long experience with alternative schools. Presently the district offers two open classroom schools that incorporate differentiated teaching styles, independent study and travel, as well as a fundamental school with a very structured learning environment and a heavy focus on the basics. Both alternative approaches must adhere to districtwide curriculum standards and achievement goals. Free transportation to these alternative schools is provided to insure that the choices available are real for all students in the district.

Alternative schools also have been recommended as a way of providing compensatory education services to the educationally disadvantaged. Based on the assumption that the compensatory add-on programs initiated in the mid-sixties did not produce recognizable improvements in achievement among disadvantaged groups of students, a study commissioned by the National Institute

of Education recommended that an alternative school approach be considered in extending compensatory services to these youth.[1]

But even before this, Kenneth Clark, in a glaring attack on urban public school systems called for "realistic, aggressive and viable" alternatives to the traditional public school (Clark, 1968). Clark argued that historical premises, administrative realities and psychological assumptions and prejudices had prevented the public schools from effectively meeting the needs of the educationally disadvantaged. He called for the development of a variety of alternatives ranging from regional state schools, which cut across urban-suburban boundaries, to "industrial demonstration schools" where private industry would finance high quality elementary and secondary schools in much the same way as the Catholic church supports parochial schools. These alternative schools, said Clark, could prove to be a source of competition to an inefficient public sector monopoly in elementary and secondary education.

In sum, alternative schools can be thought of as subsystems of the larger existing public schools. While maintaining certain ties with the traditional system, these schools are designed to increase the involvement of parents, students and teachers in the learning process.

Mini and Magnet Schools

Mini and magnet schools, although not fundamentally different from alternative schools, represent two more attempts to provide greater diversity within the public schools. Mini schools, often referred to as "schools within schools", generally offer a specialized curriculum and teaching approach in a given area of study. At the elementary level, a mini school might provide an unstructured learning environment in place of a traditional classroom or provide instruction in subject areas outside of basic reading, writing and arithmetic. At the secondary level, mini schools include separate curriculums in, for example, electronics, aviation, automotive technology and business.

One of the first experiments with the mini school concept at the elementary level was in the Alum Rock School District in San Jose, California. Parents were offered several educational alternatives at each participating school site in conjunction with a government sponsored voucher experiment in the district.

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[1]The report is entitled Contract Public Schools: Alternatives for Compensatory Education (Bushell et al., June 1977).

The initial sponsor of the experiment, the federal Office of Educational Opportunity, required that each of the six participating schools offer at least two distinct educational programs. Each "mini school" was to operate autonomously with its own budget, curriculum, education philosophy and staff (NIE, 1973, p. 6). Each mini school was also given discretionary funds to provide remedial services for educationally disadvantaged students. An early evaluation of the experiment concluded that a significant proportion of the parents involved were pleased with the broader range of choice offered via mini schools (NIE, 1973, p. 10; Cohen and Farrar, 1977).

Mini schools have also been effective at the secondary level. In addition to providing new and innovative curriculums, they have been very effective in serving disenfranchised students and potential school dropouts by offering courses of a more specialized, avant-garde, or esoteric nature.

Closely related to the mini school approach is the magnet school concept wherein a single school building is used to provide courses of advanced or special instruction to students drawn from throughout the school district. A common example of the magnet school is one for which gifted and talented students are drawn from their neighborhood schools for several class periods to receive instruction in courses for which the demand is too low at individual schools. These students may benefit from instruction in art, advanced mathematics, drama or the sciences, and as such, are provided a range of alternatives that could not otherwise be made available.

The magnet school idea has also been used as a means for desegregating schools. Based on the premise that one-race schools cannot be eliminated if an entire school district is populated predominantly by one race, magnet schools have been established to entice majority students to remain in that system by the lure of exciting alternative programs (McCarthy and Webb, 1979, p. 141).

The Effectiveness of Efforts to Expand Choice in the Public Sector

The alternative school concept and other approaches to expanding choice in public elementary and secondary schools enjoyed widespread acceptance during the early 1970s. Yet the number of these schools reached a plateau, and declined. While it is difficult to ascertain all of the reasons for the gradual disappearance of many of these schools, a number of explanations have been offered.

The lack of adequate funding has certainly been a major factor. Most innovative projects required outside funding for conceptualization and implementation. Thus, grants and fund raising activities constituted a very important element in the

continued existence of these projects and the lack of attention to workable strategies for having an innovation funded may have been the reason why some alternative schools were not internalized and standardized by a school district.

Political pressure from the public school establishment is said to have been another factor (McCauley et al., 1972). While some alternative schools were either sponsored or warmly accepted by the local school district, others were viewed as too unorthodox to be accepted.

A third explanation relates to organizational difficulties. This emphasizes internal problems produced by new authority patterns and by highly complex educational processes (Deal, 1975). Many alternative schools were designed to alter substantially the authority relationships between students and teachers. These schools had the problem of balancing the internal needs of the organization with the demands of the school district or community in which they operated (Cooper, 1973).

Failure to accomplish important education goals has been cited as a fourth reason for the decline of alternative schools. This factor is really an extension of the organizational problem referred to above. When the rules for schooling were changed, allowing for flexible, unstructured learning situations and democratic decisionmaking, it may have become more difficult to provide the kind of learning, either cognitive or affective, that students and teachers wanted (Moore, 1978, p. 438).

It is unfortunate that only a limited amount of research has been conducted on the effectiveness of alternative schools. Daniel Duke and Irene Muzio in a 1978 article, review the contents of 19 evaluations and reports on alternative schools. They point out that no firm conclusions can be drawn from the research which had been conducted, since the various evaluations were conducted by many different types of agencies -- many times by the schools themselves -- with differing underlying motives for their work. Difficulties with data availability and inconsistencies across studies have tended to exacerbate this problem.

The usual measure of school effectiveness is student achievement. A majority of the studies reviewed by Duke and Muzio included an assessment of academic achievement in alternative schools. The authors conclude, however, that no answer to the question of school effectiveness can be offered on the basis of standardized test scores. While a number of evaluations reported achievement gains, these studies employed a variety of different standardized tests as measures and therefore no generalizations can be drawn in terms of one alternative approach being more successful than another. More importantly, due to the lack of a control group in many of these studies, comparisons between alternative and conventional schools were not possible.

There are other measures of school effectiveness that were used in a number of the alternative schools analyzed. Among them were improved social behavior, work habits and responsibility as well as postgraduate success. Most of the evaluations reported favorable results on the basis of these measures, although the data available on social behavior and work habits were impressionistic and general in nature.

Those schools using postgraduate performance as an indicator of relative success also reported favorably. Here again, however, one can put only limited faith in these findings since very little longitudinal data exist to make concrete statements about successive classes of students. Furthermore, it is likely that the socioeconomic background of the student is a mitigating factor in future as well as present academic performance.[2]

On the basis of the research available, it is difficult to reach strong conclusions on the overall effectiveness of alternative schools, at least in terms of meeting important education goals like student achievement. The results are mixed across studies with some schools reporting achievement gain and others showing little or no recognizable improvement. Assessments of affective achievement were also generally favorable, yet these judgments cannot escape the use of subjective criteria.

It should be pointed out that some school districts have had a dual purpose for developing alternative schools. Not only were these districts interested in expanding program offerings or learning environments, but in at least two instances, education options were used as a strategy to desegregate schools, adding another dimension to the alternatives movement. But even here it is difficult to generalize about the effectiveness of alternatives as a desegregation tool, since the problem of racial imbalance has characteristics unique to the individual district. For example, when Minneapolis initiated its alternatives program, minority student concentration in the district was at about 20 percent. By offering choices in geographically clustered elementary schools,

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[2]Among the evaluations reviewed in the Duke and Muzio article were the following: (1) Marcy Open School, Minneapolis, Minnesota (Minneapolis Public Schools, 1974); (2) Los Angeles Alternative Schools, Los Angeles, California (UCLA Center for the Study of Evaluation, 1973); (3) The Walbridge Academy, Grand Rapids, Michigan (Information Services, Inc., 1975); (4) Harlem Preparatory School, New York (New York: Institute for Educational Development, 1973); and (5) Alternative Secondary Centers, Hartford, Connecticut (Hartford Public Schools, date unknown).

students could be assigned to a particular cluster on the basis of residence and then allowed to choose among alternatives within the cluster schools. At the same, the Cincinnati school district was in the process of implementing a voluntary desegration plan. Since the concentration of minority students was much higher (closer to 50 percent), the district had to offer alternatives to neighborhood schools. The alternatives were considered magnet schools in that they offered special programs designed to attract students of different racial and ethnic backgrounds. In both cases, the effectiveness of the choice plan was tied to unique circumstances (Bass, 1978).

What then, can be said about publicly provided alternatives as an effective means to provide greater choice in elementary and secondary education? In general, where there is no demand for education choices or where alternatives do not serve a high-priority political goal -- such as school desegregation -- it is difficult though not impossible for such an effort to be sustained. As the Bass study indicates, alternative programs, whether in the form of alternative schools, mini or magnet schools, stand a better chance of being institutionalized in larger school systems with dual purposes for implementation (Bass, 1978, p. 183).

If an alternatives program is to survive, it will depend on the active support of school district officials, teachers and parents. Central administrative support will be particularly important in legitimizing the need for such a program. In addition, there are a number of legal complications that can arise if such a plan is not carefully thought out. These include the possible exclusion of special groups of students and the possible segregative impact of such programs.[3]

Other Developments in the Public Sector That Impact on Choice

While not directly related to choice in education, the structure of school governance and management can affect the scope and flexibility of school programs. Efforts to decentralize control over schools, implement school-based management techniques and develop school building parent advisory councils all attempt to bring education decisions closer to the point of delivery of education services. Developments in these areas are briefly reviewed at this point in order to show how they impact on choice.

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[3]Pat Lines in Footnotes, Law and Education Center, Education Commission of the States, September 1980, has reviewed a number of legal issues related to choice programs in the public schools. These are summarized in Section III of this paper.

Decentralization

At about the same time that alternative schools were being organized, there were pressures in a number of large urban school districts to decentralize control of the public schools. By establishing community-controlled school districts it was reasoned that parents could more easily voice their concerns and desires about their children's education.[4] Two examples of political decentralization schools are reviewed here, New York City and Detroit.

The movement toward decentralization in New York began in the mid-sixties. The sheer size of the school system along with escalating protest from minorities that the schools were not meeting their children's needs were primary factors leading to the implementation of a decentralization plan. Proponents of decentralization felt that if the schools were under community control, they would be more responsive to the education requirements of the neighborhoods they served.

The state legislature became involved early in 1969 and a final plan for school decentralization was adopted in April of that year. Community school districts were established the following summer. Each district elects a nine-member school board that is empowered to hire administrative personnel, select textbooks and determine school curriculum. Overall budget authority is retained by the central board of education, although the local boards may determine how to allocate the funds assigned to them. As a result of decentralization, 650 elementary and junior high schools have been reorganized into 32 local districts. High schools are not a part of the decentralization plan.

Formal efforts to decentralize Detroit's public schools began in 1969 when the enabling legislation was passed authorizing regionalized governance of the schools. A law passed in 1970 amended the initial legislation, requiring that the legislature establish eight regions within the district and that elections be held to establish five-member boards of education for each region. The legislation also outlined the general responsibilities of both the regional boards and the central board of education under the new governance structure.

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[4] Charles Benson in his book The Economics of Public Education (Palo Alto, Calif.: Houghton Mifflin Company, 3rd ed., 1978) provides an illuminating discussion of the centralization-decentralization issue in the context of choice in elementary and secondary education.

School-Based Management

One innovation that has received considerable attention on a theoretical level is the school-based management concept (Pierce et al., 1975; Pierce, 1977). Under this approach, certain budgetary, personnel and curricular decisions are delegated to individual school personnel. The assertion is that the principal and teacher are in the best position to make judgments about programs for students.

Florida is the only state that has attempted to implement the school-based management concept on a statewide basis. The interest in school-based management came to Florida as part of a set of comprehensive recommendations presented in 1973 to then Governor Rubin Askew by the governor's Citizens Committee on Education. During that year, the legislature passed a series of laws to provide for greater responsibility and flexibility in managing educational programs at the school building level. Specific measures included provisions for establishing school advisory committees, comprehensive information, accounting and reporting systems, and requiring that annual progress reports of such activities be submitted to the State Department of Education. In 1976 an Educational Accountability Act was passed which included a requirement that school districts implement school-based management procedures. Since that time, the legislature and the state department of education have continued to provide assistance in implementing school-based management systems as a part of the overall education program of the state.

School Site Councils

Another important development is the growing use of school-site advisory councils. These councils, consisting of parents, teachers, principals and sometimes students, are organized to provide input into the process of determining the nature of school programs. Their function is typically advisory, although their power may vary substantially in individual situations.

In many instances, these advisory councils have been mandated as part of specific education programs, as is the case with several federal programs provided under the Elementary and Secondary Education Act (ESEA) of 1965. In Florida, all school districts implementing school-based management procedures were encouraged to include school advisory councils as a crucial element of their overall plan.

One of the states most actively moving in the direction of school advisory councils is California. An integral part of California's School Improvement Program is the establishment of an advisory council at every school building. In fact, the California education code requires that all schools intending to participate in the School Improvement Program establish a school site council

one year prior to the proposed phase-in of the program. During this time, a three-year school improvement plan is developed. Upon submission and approval of the plan, the council has the ongoing responsibility to monitor the effectiveness of the program. School districts must set aside funds for this activity.

The law is quite specific regarding membership on school site councils in California. At the elementary school level, the councils must include principals, teachers, noninstructional staff, parents or other community members. At the secondary school level, students must also be represented. Representatives of school staff and representatives of the community must be equal in number. Each group of representatives are to be chosen by their peers. In the case of school representatives, the majority must be teachers. For secondary schools, where students are involved, their presence must be equal in number to parents and school personnel.

As was mentioned, federal antipoverty programs such as Head Start, Title I ESEA and Follow Through have also emphasized parent participation in the decisionmaking process through advisory councils. The 1970 revisions of the Elementary and Secondary Education Act of 1965 included guidelines for developing advisory councils in nine separate programs under the act. Title I of ESEA, by far the largest of these programs with a budget in excess of $3.50 billion, has an estimated 60,000 parent advisory committees, commonly referred to as Title I PACs (Davies et al., 1978, p. 41).

Impact of These Developments on Choice

In what ways have these developments had an impact on choice in elementary and secondary education? After 10 years of operation in New York City and 7 years in Detroit, school decentralization has been described as a mixture of accomplishments and failures.

A recent series of articles in the New York Times presents evidence obtained from a variety of sources on the success of school decentralization in New York City, in terms of education diversity and school administration.

Diversity in educational programming is said to have increased in a few local districts while the status quo prevails in many others. One explanation cited for this relates to the budget problems the city experienced in 1975 that dried up most of the discretionary funds available for experimental programs. Instead of deciding on what new and innovative approaches to implement, many local boards found themselves making decisions on what programs could be curtailed or eliminated.

Nonetheless, some districts have been quite successful in expanding the range of course offerings and in making their

programs more responsive to community needs. A number of school districts have been successful in obtaining outside funding for the development of alternative schools or experimental projects. Unfortunately, the lack of discretionary funds has also served as an excuse for some districts to do little or nothing.

Critics are divided on whether the administration of the schools has improved under decentralization. Perhaps the most significant difference between centralized and decentralized administration is the power each local board holds to select school superintendents, principals and assistant principals. This means that school administrators must rely on the continued favor of the local school board which encourages them to listen and be more responsive to community desires. At the same time however, this new administrative structure has apparently allowed politics to interfere with effective administration. One principal from Manhattan's District I was quoted as saying that politics repeatedly interferred with his ability to perform his duties, particularly in the area of personnel management. Those whom he could hire depended largely on who was in power in the district at the time.[5]

Decentralization in Detroit was the subject of much debate not long after its implementation in 1973. Critics argued that decentralization had done little more than to add a new layer of bureaucracy to an already top-heavy school system. Supporters pointed to greatly increased citizen participation as one of the major accomplishments and argued that schools were becoming more relevant to the communities they served.

As this debate intensified, Governor Milliken and Mayor Young appointed a committee to study the matter. The Study Committee's findings were released in January of 1978, and stated specifically that:

1. Greater community participation has been demonstrated under decentralization.

2. Administrative problems do exist under the current structure due primarily to the lack of clearly defined roles and responsibilities at the central, regional and school levels.

3. There is no clear evidence that student achievement has improved under decentralization.

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[5]"The Schools and the Politicians," New York Times, June 26, 1980.

4. The cost of operation under a decentralized governance structure is $1.4 million annually or one half of one percent of the total operating budget.[6]

Thus, the assessment of decentralization in Detroit parallels that of New York City. While parent involvement has been increased substantially, the schools have become more politicized and student achievement levels seem to have been only minimally affected.

Finally, the Institute for Responsive Education has recently completed a study of school advisory councils in California, Florida and South Carolina (Davies and Zerchykov, 1980). Their report concludes that while school advisory councils have been relatively unsuccessful in monitoring the activities of school districts, they nevertheless have played an important role in improving the quality of educational programs. The narrow scope of power and authority, and inadequate resources were stated as impediments to the effective operation of some school advisory councils. This was particularly true where decisions on program and budget were made at a highly centralized level. According to the study, only when the decisions are made at the school building level (the school site management case) have these advisory councils been able to affect education policy. It was pointed out that with district support, these councils could play an important role in planning, enforcement and evaluation of school programs.

Thus, it would appear that while school advisory councils have the potential to make meaningful contributions to the public schools, they have been received by school officials with mixed emotion. Greater use of school-based management practices, as in the case of Florida, may be required to insure that these councils are able to function in a truly meaningful way. School advisory councils cannot be expected to influence education policy decisions to any great extent given the existing structure of authority within most school districts.[7]

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[6] Recommendations on the Governance and Administrative Structure of the Detroit Public Schools (Decentralization Study Committee, June 2, 1978), p. 4.

[7] Davies, Don and Ross Zerchykov, Leading the Way: State Mandates For School Advisory Councils (Boston, Mass: Institute for Responsive Education, 1980). see in particular pp. 123-140 for a discussion of various possible strategies for making school advisory councils more effective.

II. FUNDING PROPOSALS TO EXPAND CHOICE

This section reviews two basic finance mechanisms that have been proposed to increase choice in elementary and secondary education: vouchers and tuition tax credits.

Both the tax credit and voucher concepts have been discussed for many years. These ideas have been suggested as methods for financing private schools and alternative schools, for placing greater control over schools in the hands of parents, and for making schools more accountable to clients. Proponents of vouchers feel that they would introduce a healthy dose of competition into the educational system. Those who support the tuition tax credit idea or other forms of aid to nonpublic schools, argue that there should not be a state monopoly in education and that the government should support private schools to insure education pluralism and diversity. Advocates of the public schools have argued that tuition tax credit and voucher plans could have serious implications for the current education system. They see these proposals as a way for the more affluent families to abandon the public schools, perpetuating fiscal inequity and racial and social class separation. This section will describe in detail the basic elements of vouchers and tuition tax credit proposals and discuss how these proposals impact upon various segments of the population.

Education Vouchers

The voucher approach to education reform differs markedly from the various efforts discussed in the preceding section of this paper. A voucher system is designed to create a competitive market for schooling. Each family would approach an "education marketplace" with equalized resources that have been distributed to them directly from government tax revenues. Parents would choose schools according to their beliefs as to the type of education they desire for their child and their perceptions of school quality. The school redeems the voucher by sending it back to the government in return for a specified dollar amount. Under this system, government subsidies flow only to those schools to which parents have elected to send their children.[8]

While the idea of vouchers for elementary and secondary education is relatively new to this country, it has been present in Europe for some time. The idea surfaced in England in 1929 when Francis Cardinal Bourne, fourth Archbishop of Westminster, spoke of the voucher concept during a session of the National Catholic Congress.

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[8]For an overview of vouchers see C. Kent McGuire, "Education Vouchers," Working Papers in Education Finance, No. 23 (Denver, Colo.: Education Commission of the States, June 1979).

Belgium, Denmark and the Netherlands all have voucher systems in operation that allow parents to choose between public and private schools.[9] Perhaps the closest thing to a voucher system in the United States can be found in Maine. Although not considered a voucher system, the state of Maine does allow students of sparsely populated school districts without high schools to attend any public or private secondary school in the state. The sending school district reimburses the receiving school for tuition expense incurred. Thus, a system of choice has functioned at the secondary level in that state.

Voucher proposals have been presented and studied for more than a decade in this country by Milton Friedman (1972), Mario Fantini (1973), and the Center for the Study of Public Policy (1970), among others. Friedman argues that vouchers would lead to a series of improvements in the delivery of educational services. Vouchers would allow for parental freedom in choosing the type of education best suited for their children. Competition among schools would replace the present public monopoly in elementary and secondary education, and in so doing, would encourage greater efficiency and economy in the allocation of education resources. Finally, vouchers would lead to diversity in the range of school offerings through increased education entrepreneurship.

Under Friedman's proposed voucher system, parents would receive a government grant roughly equal to the cost of educating a child in the public school system. The schools, both public and private, would be required to charge tuition equal to the actual cost of education per student. Schools would compete with one another to attract students by offering programs considered relevant and of high quality. The government's role in education would be limited to the distribution of vouchers and the imposition of minimum education standards at each level of schooling.

The Friedman model has been modified in a number of ways in order to take into account such things as student achievement, family income, or tax effort. Each of these models was designed in the

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[9]For a description of the voucher debate in Europe, see A.C.F. Beales. "Historical Aspects of the Debate on Education" in Education: A Framework For Choice, Institute of Economic Affairs, Readings in Political Economy, Series No. 1 (London: Transatlantic, 1967).

interest of correcting for one or another of the many perceived shortcomings of Friedman's strictly unregulated or "pure" market model.[10]

Most recently, John Coons and Stephen Sugarman (1978) proposed what they call a "family choice" model. The basic voucher in their proposal would be worth approximately 95 percent of the comparable cost associated with educating a child in the regular public school system. This voucher would be augmented by the cost of transportation to and from school and weighted to reflect the higher cost of educating students with special education needs. Weights would also be applied to account for differences in grade level and local cost factors.

To make it easier for parents to select schools of differing quality, the model includes a provision for supplemental vouchers over and above the free basic grant. Parents would be required to purchase the supplementary voucher from the state to cover any additional tuition expense encountered at a given school. The price of these vouchers would be based on ability to pay. In addition, all schools wishing to participate in the program, public or private, must conform to a uniform admissions policy designed to minimize discriminations and provide for due process in discipline and dismissal procedures. Only vouchers could be accepted in payment of tuition at participating schools.[11]

This model is considered an improvement over the Friedman model in at least two important respects. By prohibiting schools from establishing their own admissions criteria, the family choice model attempts to prevent the systematic exclusion of minority children. And by providing supplemental vouchers on an ability-to-pay basis, it reduces the possibility of low income families being excluded from high quality schools. The weighted basic voucher, which compensates for cost differentials associated with special students characteristics and local economic factors, recognizes the existence of special students needs and includes these students in the general voucher scheme. Thus, the family choice model purports to improve the quality of education for all students, particularly poor and minority children.

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[10]Seven alternative voucher proposals are described in Education Vouchers (Cambridge, Mass.: Center for the Study of Public Policy, March 1970).

[11]What has just been described is the Coons and Sugarman model as it appeared in: "The Family Choice in Education Act," which appeared on the June 1979 ballot in California.

Criticisms of Vouchers

Despite its special considerations, the "family choice" model has fallen subject to many of the same arguments raised against Friedman's and other voucher schemes. The criticisms against all voucher plans involve three main issues: separation of church and state, financial cost, and economic and racial separation.

Legal precedent to date suggests that a voucher plan might violate the First Amendment of the U.S. Constitution. There have been numerous attempts at the state level to enact legislation that would reimburse parents for a portion of the tuition expense incurred by sending their children to private schools. This type of legislation has been struck down in the courts on the grounds that such programs would involve excessive entanglement with religion[12] (e.g. Committee for Public Education v. Nyquist, 4B U.S. 756, 1973). This problem could probably be avoided if parochial schools were excluded from the voucher program, but such a measure would seriously restrict the choices available to parents, undermining the intent of the plan.

It also has been argued that a voucher plan would raise the total cost of schooling due to the number of children attending nonpublic schools that would be subsidized by the government. For instance, legislative analysts in Michigan estimated that the state would have needed an increase of close to $2.2 billion to cover the additional expense of participating nonpublic schools if the voucher proposal on the November 1978 ballot had passed.[13] It was estimated that the California initiative would have cost an additional $1 billion during the first year of operation.

Vouchers invite existing private schools to compete more vigorously with the public schools for students. If significant numbers of public school students were to opt for private alternatives, the impact on public school budgets could be dramatic.[14] The realities of declining enrollments and budget limitations are already placing considerable strain on the operating budgets of many school districts. A voucher system

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[12]Parochial school attendance in most states constitutes over 80 percent of total nonpublic school enrollments. See The Condition of Education, National Center for Education Statistics, 1980.

[13]House Fiscal Agency Estimates. Michigan House of Representatives (Lansing, Michigan, October 1978). These figures were based on an inflation rate of seven percent.

[14]That parents would be subsidized for sending their children to nonpublic schools does not mean that they would necessarily choose these schools, only that they would have a greater ability to do so.

could place additional strain, for example, on inner city school districts that already compete with suburban school districts for students, since it would allow urban students greater flexibility in choosing among schools. This pressure would result in rising per pupil expenditures in these districts in order to maintain current service levels.

That vouchers would promote economic and racial separation has been one of their most serious criticisms. Levin (1979) summarizes this issue when he discusses the voucher idea in terms of equity for parents and students. He points out that inasmuch as parents would be free to choose among all schools, one would expect them to choose school environments that they feel are in line with the beliefs and values they hold as parents. In much the same way, one expects schools to employ selective admissions policies in order to protect a homogeneous student body from the influences of beliefs and values not deemed appropriate or desirable. He suggests that the ability of parents and schools to make decisions strictly on the basis of unique value structures, when exercised on the large scale made possible through vouchers, has serious consequences for the general welfare of society. The voucher approach when viewed in this light could be seen as encouraging social class stratification. Levin warns that policy-makers should question the use of public funds in support of an educational system capable of producing these results.

Levin's observations are not based on mere speculation. Voucher plans instituted in a number of Southern states following Brown v. Board of Education were ruled unconstitutional as remedies to segregated public schools (e.g., Green v. County School Board, 1968). The question -- which is difficult to answer in the absence of a true test -- is whether a choice plan instituted by way of education vouchers, free from pressures to desegregate, could operate without a segregative impact. Levin and others tend to think not.

There are two other concerns related to vouchers that have received less attention in the literature. One involves the impact of a voucher system on special student populations. As mentioned, the Coons and Sugarman proposal included provisions to account for the additional expense associated with educating educationally disadvantaged, bilingual and handicapped children. However, it is doubtful that these children would find options available to them other than the existing public schools. Although federal law now mandates that nonpublic school students be provided access to federally funded categorical programs, these schools are not required by law to provide any form of education beyond a minimum curriculum. Unless nonpublic schools expanded their range of services or new schools opened to accommodate these students, many handicapped, non-English speaking and educationally disadvantaged students may find the public schools the option of last resort.

The other is the philosophical question relating to whether the government or the individual should make decisions about education. The voucher idea is grounded in the belief of individual freedom and parental ability to make informed decisions in the best interest of children. The history of public education on the other hand demonstrates a consistent state interest in broad societal concerns for citizenship, common values and functional literacy. Although no absolute consensus has ever been reached regarding these broad concerns, there is no reason to believe a priori that these general goals and objectives are consistent with those expressed at the level of the individual family unit.

That parents are more likely to know and care about a child's needs is a very appealing argument. Pacheco (1980) notes this, but also points to state education codes and Supreme Court decisions as proof of a consensus regarding certain basic goals of public education. Thus, he disputes the contention by Coons and Sugarman that society cannot know what is best for school children -- in other words, that no consensus can ever be reached at this level.

In summary, the voucher idea was introduced as a funding approach that would facilitate greater choice for parents and students among education alternatives. It has been argued that the production of education services by the traditional public school system is inefficient and produces a lower-quality product. Voucher proponents suggest that by creating a competitive market for schooling, educational services would be delivered more efficiently and that the quality of school programs would improve. Vouchers would also provide financial support to nonpublic schools, relieving their clientele of the burden of paying tuition twice: once in support of public schools through tax dollars, and then to the private schools in which they have enrolled their child.

At the same time, there are many unanswered questions about the design and mechanics of a voucher system that makes the acceptance of such radical reform difficult. There is concern about the cost of a voucher system and its possible adverse impact on the existing public schools. There is concern that vouchers might lead to greater socioeconomic fragmentation in society and undermine many of the basic goals of American public education. In all probability, it will take a true test of the idea in order to resolve these issues. Policymakers may have to await this test before deciding on the viability of a voucher system.

Tuition Tax Credits

Tuition tax credit proposals have been promoted as another means of facilitating greater choice in elementary and secondary education by providing assistance to parents who wish to send their children to private schools. Under a tax credit plan,

parents who pay tuition at private schools would be eligible for a credit on their annual income tax return equal to some specified amount or percentage of the total tuition expense per child enrolled. Proponents find the idea appealing in that this form of assistance would not involve the direct allocation of government funds thereby precluding the need for a large bureaucracy to administer such a program.

The tuition tax credit idea has a 15-year history at the federal level. Over the 10-year period from 1967 to 1977, six education tax credit proposals passed the Senate, most of them focusing on relief for college expenses. Extensive hearings were also held by the House Ways and Means Committee in 1972 when more than 100 tax credit proposals for elementary and secondary education were pending in the House. Renewed interest came during the 95th Congress when a series of bills were introduced in both the House and Senate. The most prominent of these was the Packwood-Moynihan Tuition Tax Credit Act of 1977. This bill, had it passed, would have allowed parents currently paying tuition at nonpublic elementary and secondary schools a credit on their federal income tax returns of up to $250 per child beginning in 1980.[15]

The types of expenses considered appropriate for relief and tax credit levels have varied from bill to bill. For example, one bill provided for a credit against income taxes for tuition paid up to $300. This bill would have allowed a credit for tuition expense incurred at colleges, universities, vocational and elementary and secondary schools. Another bill called for a credit of 50 percent of tuition paid with a ceiling of $250. The amount of credit allowable under this bill would be reduced by an amount equal to five percent of the amount by which the adjusted gross income of the taxpayer exceeded $18,000. The bill applied specifically to elementary and secondary schools. Numerous other tax credit bills were introduced in the House and Senate varying primarily with regard to the amount of the tax credit and to the level of schooling eligible for relief.

Both the Packwood-Moynihan proposal and others represent a straightforward approach to the tuition tax credit idea, although the differing credit levels do have implications for the number and type of beneficiaries. Other tax credit schemes could be developed. For example, the system could operate according to a graduated scale of credits based on tuition expense as a proportion of income. Under this approach, families with lower incomes would tend to receive a larger credit than moderate and high income families.

An income ceiling could be an added feature of a tax credit program so that families with incomes above a specified level would be ineligible for a tax benefit. Either of these two

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[15]An early version of this legislation would have set the tax credit ceiling at $500.

alternatives is designed to target the tax credit to those thought to need this type of assistance the most.

While not strictly a voucher plan, the tuition tax credit has a similar effect. It serves to expand choice by reducing the cost of private schooling. The idea is supported most vigorously by the private school lobby, but organizations such as the Congress of Racial Equality and the distinguished black economist Thomas Sowell have extended support for the idea. Sowell stated in a communication to Senator Moynihan that he regarded tuition tax credits as an opportunity to give working class parents greater latitude in deciding where their children could attend school. He notes that numerous private schools have been able to operate at tuition levels considerably less than the average per pupil expenditure in public schools and that many minority children are currently being educated at these schools -- particularly in Catholic schools which remain in what are now depressed inner city neighborhoods. He feels that the argument that tuition tax credits would benefit the rich is misplaced.[16]

Yet many of the concerns related to vouchers apply with regard to tuition tax credits. That tax credits would lead to increased social class stratification, fall inequitably on different taxpayers and students, that they would violate the Establishment Clause of the U.S. Constitution -- all these issues can easily be extended to the tuition tax credit debate. Opponents are especially concerned that tax credits would provide incentives for private schools to raise tuition levels and that they would tend to benefit only middle and upper class families that are the traditional clientele of private schools.

Martha Jacobs (1980) has analyzed two tax credit proposals in the light of 1978 current population survey data, which includes information on private school enrollments and tuitions by geographic region, family income, race and level of schooling.[17] She finds that even with reports of recent shifts in the composition of private school enrollments, they remain predominantly more Northern, white and wealthier than the general school population. She contends that the distribution of benefits under recently proposed tax credit schemes would be proportional to current private school attendance rates.

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[16]See: "Tuition Tax Relief Bills." Hearings Before the Subcommittee on Taxation and Debt Management Committee on Finance United States Senate 95th Congress, Second session. January 18 and 19, 1978, p. 706.

[17]The remainder of this section reviews Jacobs' analysis.

Jacobs analyzed two sample tax credit proposals: plan A would have allowed for a credit of 35 percent of tuition paid up to $100 per student; plan B closely resembled the Packwood-Moynihan proposal. Based on differences in attendance rates by race and level of schooling and on differences in tuition charges among schools, she is able to illustrate who is likely to benefit most under each of the sample tax credit plans.

On a nationwide basis, elementary students are likely to receive a substantial share of the benefits, since their enrollment in private schools is more than double that at the secondary level. This is especially true under plan A where it is estimated that 70 percent of the total amount available for credits would flow to the elementary grades (Jacobs, p. 3). Under plan B however, with the higher tuitions paid at the secordary level and the higher credit ceiling, high school students would be expected to yield about 50 percent of the total dollars available.

Jacobs finds patterns of regional distribution pretty much as expected -- a greater proportion of total benefits flowing to the Northeastern and North Central parts of the country since these regions enroll nearly 61 percent of total private school enrollments. But due to higher median tuition charges at the elementary level in the South and West, plan B would channel approximately 60 percent of the available funds for elementary students, to these regions (p. 4, Table II).

One of the more interesting findings of the study is that black students tend to pay more to attend private schools than their white and Hispanic counterparts. The median tuition at the elementary level exhibits the greatest disparity with blacks paying $477 compared with $342 for whites and $388 for Hispanics (p. 6, Table III). This represents a median tuition charge for blacks which is approximately 23 percent higher for Hispanics and 30 percent higher for whites. Jacobs offers several possible explanations for this, although she provides no conclusive statement as to which is most important. A popular argument is that private schools discriminate against minorities by attempting to price them out of the market. Others suggest that the higher tuition charges are associated with family income, residence and religion. This is an interesting topic for further investigation as it might provide additional insight into why black students represent such a low proportion of private school enrollments, estimated to be about 6 percent at the elementary school level and 5 percent at the high school level. Jacobs finds at the elementary level that plan A would allocate 6 percent of total benefits to black students. Blacks would do slightly better under plan B, generating about 8 percent of the total (p. 6, Table IV).

Probably the most important finding of this study from a policy perspective is that tuition tax credits, in their usual form, are likely to be regressive across family income categories. Under plan A, families with annual incomes in excess of $25,000 receive 24 percent of the benefits at the elementary level and 37 percent

at the secondary level. The corresponding figures for plan B are 33 and 41 percent respectively (p. 8, Table IV). On the other hand, the percent of the total going to families with incomes of less than $10,000 at the elementary level is 5 percent under both plans. At the high school level, the figures are 3 and 2 percent respectively.

Jacobs points out that these figures may overstate the actual shares since both plans assume that a family with no tax liability would receive a refund rather than a credit. But the fact that many of the tax credit plans proposed to date have no refundability provision means that a tax credit would be of no benefit to many low-income families (p. 9).

These findings are inclined to support the contentions of opponents that tuition tax credits will not benefit low income and minority families and thus may not do much to advance their education opportunities. However, the Jacobs study does not analyze the effects of a tax credit program in light of changing attendance rates. If both low income and minority children were to enroll in private schools in greater proportion due to the availability of tuition tax credits, it is conceivable that tax credits would exhibit less of an adverse impact on these groups. Yet there is no reason to assume a priori that tuition tax credits, in and of themselves, would provide an incentive for these groups to flock in larger numbers to the private sector. Jacobs points to early evidence showing that private enrollments have not been sensitive to changes in tuition levels (Brown, 1972).

With the concerns of many of those who object to tuition tax credits seemingly confirmed by the evidence that Jacobs provides, proponents of tuition tax credits may find it difficult to push such a proposal through a state legislature or through Congress. However, with a new Congress and a new administration, interest in tuition tax credits has once again been revived. At the present time, 12 bills have already been introduced proposing tax credits of various magnitude for elementary, secondary and postsecondary education expenses.

One of the key differences between current attempts to enact education tax credit legislation and earlier attempts will be the active support of the current administration. Although no specific proposals have been offered by the Reagan administration, the Republican platform upon which President Reagan was elected explicitly supports the idea.

Nevertheless, the tax credit issue is likely to engender considerable debate in Congress. Opponents to the idea are already mobilizing against the recent flood of tax credit proposals. Although most of the bills introduced thus far are of the fashion previously described, these basic proposals could be modified in a number of ways which would probably make them more attractive. Their future may hinge on such developments.

III. LEGAL ISSUES

There are a number of legal issues that arise in a discussion of choice. Vouchers and tuition tax credit proposals raise concerns over their possible impact on racial and cultural balance within schools as well as over the constitutionality of providing aid to nonpublic schools. This section relies heavily on a recent review of these issues by Patricia Lines.[18] Her review includes the implications of various methods for providing choice in light of legal obligations to desegregate schools and the constitutionality of extending public aid to nonpublic schools.

Racial Imbalance

If a school district is under court order to desegregate a choice plan will often be an unacceptable policy to skirt or to remedy past acts of discrimination (Lines, 1980, p. 5). For instance, in the late sixties a number of Southern states tried to establish voucher programs to channel public funds to segregated private schools in order to avoid dismantling separate-race school systems. Each of these programs was ruled unconstitutional.[19] In addition, several freedom-of-choice attendance plans have been found invalid by the courts for failure to eliminate one-race schools.

These decisions indicate that the courts scrutinize very carefully attempts by school districts or state governments to use choice plans as a part of or in conjunction with an effort to desegregate schools. When such plans have been found either to contradict desegregation efforts or to be ineffective remedies, they have been overruled by the courts.

Usually, however, the courts have not found choice plans unacceptable without first giving them a chance to perform. Lines cites several cases of school district attempts to implement a free choice enrollment policy to desegregate schools. After trial periods ranging from between one and three years, none of these policies were able to produce the degree of racial balance mandated by the court. It appears, at least from these early examples, that free choice and free transfer plans are not very successful in eliminating segregated schools.

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[18] Patricia Lines. "Legal Pitfalls of Various Methods for Providing Choice," Footnotes, no. 3 (June 1980) and no. 4 (September 1980).

[19] A listing of relevant court cases is included in the references.

On the other hand, the Minneapolis options program is one example of a choice or "limited-choice" approach that has successfully aided in desegregating a city's schools. Further, Cincinnati and Houston are two cities in which the magnet school approach has been used with some success in achieving greater racial balance.

Yet the magnet school approach, like the open enrollment choice plans that preceded them, has been questioned. In Brinkman v. Gilligan, the circuit court of appeals concluded that the heavy reliance on magnet schools was inadequate as a remedy to desegregate for the Dayton, Ohio school district. Similar rulings have been handed down in Columbus, Ohio and Pasadena, California.[20]

Choice plans could conceivably encounter legal challenges even when they are not implemented as a tool to desegregate. At least one might reach this conclusion after reading the opinion of the court in Columbus Board of Education v. Penick in which the Court stated that a "foreseeable and anticipated disparate impact" from certain school district policies could be found unacceptable. Although this was clearly a desegregation case, the comment suggests that certain policies of a school district could be used as grounds for a finding of de jure segregation, thus invalidating those policies. In the opinion of the court, if a choice plan would produce a more segregated school system in the future, it might rule such a plan unconstitutional. In Boston, a proposed choice plan was rejected prior to implementation on grounds that an earlier choice plan in Boston as well as free choice plans elsewhere had not proved workable (Lines, 1980a, p. 5).

In conclusion, it is important that school officials who contemplate experimentation with systems of choice, in whatever form, be careful in formulating their plan and in analyzing its potential impact on racial segregation, whether or not the district is under court mandate to segregate. For a program to survive judicial scrutiny, it must diminish and clearly not exacerbate racial isolation.

Aid to Nonpublic Schools

Choice plans in the form of vouchers or tuition tax credits must undergo the additional test of satisfying the First Amendment of the U.S. Constitution that provides for separation of church and state. Because the vast majority of private elementary and secondary schools in most states are religiously affiliated, any choice system that involves private schools will usually be subject to a constitutional challenge (Lines, 1980b, p. 5).

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[20]See Martha M. McCarthy and L. Dean Webb, "Intra-District Desegregation Remedies" NOLPE School Law Journal, vol. 8, no. 2 (1979), p. 142.

The Supreme Court has established certain guidelines by which to judge the constitutionality of aid to religiously-affiliated private schools. These guidelines were forged in early cases such as Board of Education of Central District No. 1 v. Allen. In this case the First Amendment was interpreted as requiring that an aid program have: (1) a secular legislative purpose and (2) an effect that neither advances nor inhibits religion. This judgment was subsequently expanded to include freedom from excessive entanglement between church and state. Thus, aid to sectarian schools is constitutionally feasible depending upon the nature of the aid.

Case law in the area of relief to parents and private schools suggest problems for vouchers and tuition tax credit programs. In 1972 the New York Legislature passed into law three programs that offered some financial relief to nonprofit elementary and secondary schools. One program was to provide direct grants ranging from $30 to $50 to qualifying nonpublic schools for maintenance and repair of facilities. Another program established a tuition reimbursement plan for parents of children in nonpublic schools. The third was a tax measure for parents who did not qualify for the tuition reimbursement. This legislation was ruled to be in violation of the First Amendment. The New York legislation met the first of the three legal standards mentioned above, but failed the second because it was said to subsidize directly the religious activities of church-affiliated schools.[21]

These same tests were applied more recently in New Jersey. In 1976, the New Jersey Legislature passed a law offering a $1,000 per child tax deduction for tuition paid to private elementary and secondary schools as well as colleges and universities. This legislation was overruled two times on appeal (Byrne v. Public Funds for Public Schools of New Jersey, 1979).

The courts have been less stringent when relief programs have been designed to provide aid for textbooks or specific educational services. In Wolman v. Walter, the court upheld the portion of Ohio's aid program that provided direct aid for textbooks, administration of standardized tests and diagnostic and therapeutic services (Lines, 1980b, p. 6). Subsequent to this, the Supreme Court has ruled in favor of a modified New York law to reimburse nonpublic schools for the expense of various state-mandated testing and reporting duties (Lines, 1980b, p. 6).

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[21]At the time this legislation was proposed, approximately 700,000 students attended nonpublic schools in New York. The court noticed that approximately 85 percent of these schools were church affiliated.

These cases suggest that there are certain forms of aid to nonpublic schools that the courts find acceptable. This seems to be true especially when the aid covers the expense of activities that are purely secular in purpose and in no way involve religious instruction. At the present time, it is unclear whether voucher or tuition tax credit programs, which allowed for church-school participation, would survive in the courts. It has been argued that if these schools were excluded such programs might be ruled valid.[22] At any rate, the constitutionality of choice programs which involve extending aid to nonpublic schools is yet to be determined. This determination must await a true test of the issue.

Other Potential Legal Pitfalls

There are other legal issues related to choice. They include the possibility of choice plans having the effect of excluding specific groups of students, such as handicapped, bilingual or female students. There are questions of due process regarding denial of access to special academic programs, as well as the parents' rights to exempt their children from courses to which they object. Legal findings on this issue have been mixed. These and other issues are discussed by Lines and others and will not be discussed in any detail here (e.g., VanGeel, 1975).

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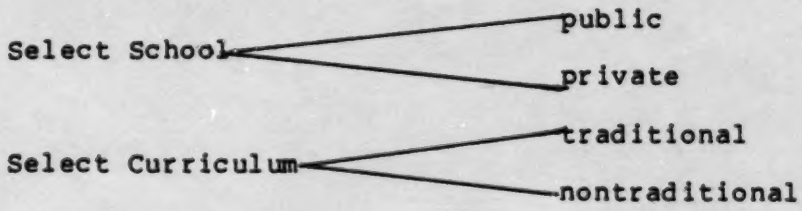
[22]See "Government Neutrality and Separation of Church and State: Tuition Tax Credits," Harvard Law Review, vol. 92 (1979).

IV. CONCLUDING REMARKS

From the discussions of the previous three sections it is clear that choice, as an issue at the elementary and secondary school levels, is a complex one. Different proposals for expanding the alternatives available to parents/students carry with them different implications in terms of efficiency, equity, education and legal considerations. Note that efforts to expand choice within the public sector run the risk of excluding certain groups or types of students thus violating the constitutional requirements of either the Fifth and/or Fourteenth Amendments. Voucher and tuition tax credit proposals raise serious concerns about not only racial and socioeconomic fragmentation, but also the efficient allocation of educational resources. All of the methods described above raise the additional question of who should make decisions regarding what is best for school children.

What has been presented above is not an attempt to resolve these issues, but rather to present them in a context which allows the reader to appreciate the manner in which they relate and overlap. The following schematic may help to summarize what is involved in the debate on "choice."

Most choice plans would allow parents/students to do one or more of the following:



Select Teacher
from those available

All choice plans would involve one or more of the following considerations:

1. Efficiency
2. Equity
3. Legal
4. Educational -- (i.e. who determines what is best for children?)

    -State
    -Educators
    -Parents
    -Students

Education decisions, when viewed in the context presented above, are thrust into the philosophical arena. This is reflected in the fact that choice proposals call into question the basic goals of our existing education system. These goals have historically been to provide all persons with a basic education, enriched by the instruction of citizenship and a common political ideology. This in turn, has led to the development of a massive public education system with its own public decisionmaking apparatus. Elected local school boards appoint school superintendents who in turn manage a complex local education bureaucracy. This is further complicated by state and federal involvement in education, both financially and programatically. The point is that this system of collective control is philosophically different from one which emphasizes individual choice and self interest.

Pluralism and diversity may also be desirable goals. Yet they hold the potential to conflict with many of the longstanding objectives of public education. Assuming that greater choice in education will continue to be an issue at the elementary and secondary level, it will be important that policymakers be able to strike a balance between various and sometimes conflicting goals of public education and alternative choice mechanisms.

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